creditors in general is revocable. The distinction taken is that in the former case the intention of the assignor could only be to benefit the persons named, while in the latter his object might be either to benefit the creditors or to further his own convenience. But here again it may be observed that the circumstances of a case must indeed be strong to show in the face of the words "in trust for creditors" that the debtor made the assignment for his own convenience, and not for the benefit of his creditors. Furthermore, all the reasons of policy would seem to lead rather to the American doctrine. Assignments in trust for creditors should be supported whenever possible; and to dispense with the delay caused in obtaining the creditors' assent is obviously of benefit in transactions where prompt action and despatch are especially desirable.

RECENT CASES.

AGENCY — APPLIANCES — ASSUMPTION OF RISK. — A master promised a servant to remove a defect in certain machinery. *Held*, that the servant may rely on the promise and continue in the service without assuming the risk, only for such time as is reasonably sufficient to enable the master to remedy the defect. Three judges dissenting. *Illinois Steel Co.* v. *Mann*, 48 N. E. Rep. 417 (Ill.).

The dissenting judges proceed on the ground that the test is whether such a time has elapsed that it would be unreasonable for the servant to rely longer on the master's promise, and not whether the master has had a reasonably sufficient time in which to make the repairs. This precise point has seldom been discussed. The question is one of intention, for whenever the servant must be taken to have assumed the risk, the liability of the master ceases. Mechem, Agency, §§ 660, 661. In applying the rule of the principal case, it might happen that the master's liability would terminate while the repairs were in course of completion, but this result would be very unreasonable. There is some loose language in the books supporting the decision, but the dissenting opinion is preferable, as it is unjust to hold that the servant intends to assume the risk so long as he may reasonably expect the master's promise to be performed. Shearm. & Red., Neg. § 96; *Eureka Co.* v. *Bass*, 81 Ala. 200.

AGENCY — BANKS — DRAFT FOR COLLECTION. — The plaintiff placed a draft for collection with a bank. The bank exercised reasonable care in the selection of sub-agents necessarily employed to do the work, and seasonably transmitted the draft through such sub-agents to the place of payment. *Held*, that on default of one of these sub-agents the bank was not liable to the plaintiff for the amount of the draft. *Irwin* v. *Reeves Pulley Co.*, 43 N. E. Rep. 601 (Ind.); *State National Bank* v. *Thomas Mfg. Co.*, 42 S. W. Rep. 1016 (Tex.).

There is much conflict of authority as to the liability of a bank to one who deposits with it a draft for collection in a distant place. In the federal courts, in New York, and in some other States, the bank is held to be an independent contractor, and so liable to the depositor for any default of its correspondents. *Exchange National Bank* v. *Third National Bank*, 112 U. S. 276; *Allen* v. *Merchants' Bank*, 22 Wend. 215. In other States the doctrine of the principal case prevails. *Dorchester Bank* v. *New England Bank*, 1 Cush. 177. The question is really one of fact. It would seem that from the nature of the case there is an implied authority for the appointment of sub-agents by the collecting bank. The latter is not expected to collect personally, and the better view seems to be that it ought not to be held to anything more than reasonable skill and ordinary diligence in the selection of its correspondents. Mechem on Agency, § 514.

BILLS AND NOTES — PURCHASER FOR VALUE — COLLATERAL SECURITY. — *Held*, that the holder of a note on collateral security for an antecedent indebtedness is not a purchaser for value. *Noteboom* v. *Watkins*, 72 N. W. Rep. 766 (Iowa).

The doctrine of the principal case has been strongly supported, notably in New York. *Stalker* v. *M'Donald*, 6 Hill, 93. The better view is against it. Bigelow on Bills and Notes, 216; 1 Daniel, Negotiable Instruments, § 826. It is generally said that the consideration is the obligation imposed on the creditor by becoming the holder of

the note. This seems unsatisfactory, for the holder of the note is given a claim on persons on whom before he had no hold. This is rather a benefit conferred on him than a detriment suffered by him. It has been suggested that a more satisfactory way of reaching the same result is to abandon the search for a common-law consideration, and consider the position of the holder of the collateral. He has the title, and the question is one of conflicting equities. As between two persons having equal equities, the legal title should prevail. *Price* v. *Neal*, 3 Burr. 1354. In the great majority of cases the position of the holder of the collateral security has been changed, and the court will not examine to see if there has actually been a change in the particular case. These considerations, taken in connection with the desire of the merchants for a settled rule, would justify a decision opposite to that in the principal case. Such is universally the rule on the Continent, and a similar result has now been reached in New York by statute.

CARRIERS — CONTRIBUTORY NEGLIGENCE OF PASSENGER. — Where one who has procured a ticket has to cross a track to reach his train, *held*, that the rule as to looking, applicable to strangers or employees, does not apply, and the question of contributory negligence of the passenger should have been submitted to the jury. *Warner* v. *B. & O. R. R. Co.*, 18 Sup. Ct. Rep. 68.

This question does not seem to have arisen in the United States Supreme Court before. The decision is in accord with authority. Fetter on Carriers of Passengers, § 136, and cases cited. Because of the carrier's duty to passengers to use the highest degree of care, and of the right of the passenger to assume that in such a case as the principal one the passage is safe, courts have not been inclined to adopt a rule which keeps the question of contributory negligence from the jury. In case of a passenger, looking does not seem to be required even in States where a stranger is governed by the "stop, look, and listen" rule. *Pa. R. R. Co.* v. *White*, 88 Pa. St. 327. The Supreme Court of the United States has apparently been averse to adopting the "stop, look, and listen" rule to its full extent. *Delaware R. R. Co.* v. *Converse*, 139 U. S. 469. It would therefore be more ready to adopt any distinction made in case of passengers.

CONSTITUTIONAL LAW — CLASS LEGISLATION — INDIANS. — *Held*, that a State law forbidding the sale of liquor to any Indian, applies to an Indian who is a citizen of another State and of the United States, and is a valid exercise of the police power and not in violation of the Fourteenth Amendment. *State* v. *Wise*, 72 N. W. Rep. 843 (Minn.).

The court says it is well known that, in spite of individual exceptions, the Indians as a race are less civilized than the whites, less subject to moral restraint, more liable to acquire the liquor habit, and more dangerous when intoxicated, and the legislature might therefore reasonably pass the law in question for the mutual protection of the Indians and the community. In view of the present unfortunate situation of the Indian race, this reasoning seems justifiable, especially in regions where the Indians continue to live together in bodies in a low state of civilization, although by a hasty administration of the Severalty Act of 1887 they may have become citizens. The statute, in this view, does not make an arbitrary race discrimination, but rests on the mental and physical peculiarities of the Indians; and its harsh operation on certain members of the race affords no argument against it. Whether similar legislation would be sustained with regard to members of other races admittedly inferior as a whole to our own in point of civilization, it is impossible to say, although the same reasoning would seem to apply. The question would probably be greatly affected by public sentiment.

CONSTITUTIONAL LAW — IMPAIRMENT OF OBLIGATION OF CONTRACTS — CHANGE OF REMEDY. — A gave a judgment note when, according to the law in force, it was possible for the payee to confess judgment at any time before an assignment for the benefit of creditors, and thereby obtain a preference. Four days before confession of judgment in accordance with the warrant of attorney in the note, a statute went into effect, providing that within ten days after any such judgment the debtor might defeat the levy by a voluntary assignment. *Held*, that as to existing contracts the statute is unconstitutional as impairing the obligation of contracts. Cassoday, C. J., dissenting. *Second, etc. Bank* v. *Schrank*, 73 N. W. Rep. 31 (Wis.).

There is doubtless a distinction between the rights under a contract and the remedy upon it. The latter may be changed if what is substituted is adequate to enforce the rights of the parties. The Statute of Limitations may be shortened as to existing contracts if reasonable notice be given. *Terry* v. *Anderson*, 95 U. S. 628. But the remedy may be so altered as substantially to impair some right growing out of the contract. When this is the result the law is void. *Brine* v. *Ins. Co.*, 96 U. S. 627. So in the principal case the legislature has in reality provided a method whereby the

debtor can destroy a preference legally gained by the creditor. The dissenting judge takes the ground that the law is good because it is simply a new provision of the insolvency law to secure a more equitable distribution of the debtor's property. But insolvency acts, like other laws, are good only so far as they do not impair the obligation of contracts. See *Ogden* v. *Saunders*, 12 Wheat. 213.

CONSTITUTIONAL LAW — IMPAIRMENT OF OBLIGATION OF CONTRACTS — LOTTERY FRANCHISES. — *Held*, that a lottery franchise granted by a State is not a contract within the meaning of the constitutional provision forbidding the States to pass laws impairing the obligation of contracts, but is simply a license which the State, under its police powers, may revoke at any time. *Douglas* v. *Commonwealth of Kentucky*, 18 Sup. Ct. Rep. 199. See NOTES.

CONTRACTS — IMPLIED PROMISE TO PAY FOR SERVICES. — The plaintiff performed work for the defendant, at the latter's request. At the time, the plaintiff intended to make no charge, as he expected to receive employment from the defendant. The defendant did not know of the plaintiff's intention, but had made no agreement to pay. *Held*, the plaintiff could recover the value of his services. *Thomas* v. *Thomasville Shooting Club*, 28 S. E. Rep. 293 (N. C.).

If both parties understood that the services were to be gratuitous, of course the plaintiff could not recover. No legal obligation would be created by the performance of work which was intended and received as a gift. *Osborn* v. *Guy's Hospital*, 2 Str. 728; *Collyer* v. *Collyer*, 113 N. Y. 442. But in the absence of agreement or special relations between the parties, when one person does work for another, at the latter's request, there is an implied promise to pay for it. A secret intention to make no charge does not make a gratuity of that which would otherwise create a legal obligation. At most, such intention only shows that, under certain circumstances, the one who did the work was willing to waive a legal right which he might enforce if he desired. *Baxter* v. *Gray*, 4 Scott N. R. 374; Keener, Quasi-Contracts, 315 *et seq.*

CONTRACTS — SALES — SEVERABLE CONTRACTS. — Defendant, a butcher, contracted to sell to plaintiff all the hides, calfskins, pelts, and tallow of animals to be slaughtered by him during a certain period, the rate of compensation for each article being fixed. Plaintiff deposited $200 to bind the bargain. He afterwards refused to take the hides, whereupon defendant declined to deliver the other articles. *Held*, that the contract is severable, and plaintiff may recover damages for the non-delivery of those articles. *Herzog* v. *Purdy*, 51 Pac. Rep. 27 (Cal.).

The court lays down the broad rule that a contract for the sale of different articles, affixing a price for each, is presumably severable. This is supported by the weight of authority. 2 Pars. Cont., 8th ed., 633, 637. Where the transactions are really separate the result is just, but it would seem that each case should be judged according to its circumstances. In the principal case the facts would justify the conclusion that the defendant wished to dispose of all the articles he could not use in his business by one entire contract, and then the question should be whether the plaintiff's refusal to take the hides was a breach going to the essence of the contract. This is the test applied in contracts where all the articles are of the same kind, and also in instalment contracts, and it is difficult to distinguish the principal case from these. *Norrington* v. *Wright*, 115 U. S. 118; *Baker* v. *Higgins*, 21 N. Y. 397.

CONTRACTS — SPECIFIC PERFORMANCE — STATUTE OF FRAUDS. — A and B entered into an oral contract as to certain land. B alone signed a memorandum sufficient to satisfy the Statute of Frauds. *Held*, that A was entitled to specific performance, for by bringing the suit, plaintiff, in writing, consents to the contract and makes the remedy as well as the obligation mutual. *Central Land Co.* v. *Johnston*, 28 S. E. Rep. 175 (Va.).

The case is interesting as overruling *Wood* v. *Dickey*, 90 Va. 160, which seems to be the only decision *contra* in any court, although some of the earlier cases contain *dicta* to the same effect. The decisions are usually put on the ground that plaintiff, by bringing the action, makes the remedy mutual. A better reason would appear to be that the memorandum on plaintiff's part can be made at any time, and the bill itself may be regarded as one. This is suggested in Story, Eq. Jur. § 755, and adopted as the proper ground in Browne, St. Frauds, § 366, where the authorities are collected.

CONTRACTS — STRANGER TO THE CONSIDERATION — SOLE BENEFICIARY. — The declaration alleged that defendant offered the services of his stud-horse for a certain sum, and further agreed to pay $750 to the owner of the first of the foals of said stallion that should trot a mile in two minutes and thirty seconds. One P bred his mare to this stallion, and sold the foal to plaintiff, to whom, on performance of the con

dition, defendant refused to pay the $750. On demurrer, it was *held* that the declaration stated a cause of action. *Whitehead* v. *Burgess*, 38 Atl. Rep. 802 (N. J.).

The court construed the contract to mean that the money was to be paid to the person who should own the colt at the time it should trot the mile. Perhaps a more natural construction would be that the money was to be paid to the owner of the dam, in which case the contingent right of action would be impliedly assigned by the sale of the colt. On the construction adopted by the court, the plaintiff was clearly a sole beneficiary though a stranger to the consideration. Earlier cases in New Jersey establish the doctrine of *Lawrence* v. *Fox*, 20 N. Y. 268, that a third party may sue at law on a contract made for his benefit, provided the promise looks to the satisfaction of a valuable claim of the third person against the promisee. *Laing* v. *Lee*, 20 N. J. Law, 337; *Joslin* v. *New Jersey Car Spring Co.*, 36 N. J. Law, 141. The New York courts, resting the doctrine on the principle of subrogation, refuse to extend it to actions brought by a sole beneficiary. *Buchanan* v. *Tilden*, 39 N. Y. Supp. 228. In the present case this distinction was not taken, the court treating *Joslin* v. *New Jersey Car Spring Co.*, *supra*, as necessarily controlling the question to be decided. There appears to be no other case in New Jersey according a right of action to a sole beneficiary.

CRIMINAL LAW — INDICTMENT — STENOGRAPHER IN GRAND-JURY ROOM. — A stenographer employed by the prosecuting attorney was present in the grand-jury room and took down in shorthand the evidence on which the indictment was based, for the use of the prosecution. *Held*, that the presence of the stenographer was not ground for quashing the indictment in the absence of proof that the accused was prejudiced thereby. *State* v. *Bates*, 48 N. E. Rep. 2 (Ind.). See NOTES.

EVIDENCE — CONFESSIONS. — When a statement of one accused of murder is induced by words on the part of a police officer which, under all the circumstances of the case, must give rise to some fear or hope of favor in the mind of the accused, and the statement so made is subsequently admitted in evidence against the accused, the admission of this evidence is *held* error for which a new trial must be granted. *Bram* v. *United States*, 18 Sup. Ct. Rep. 183. See NOTES.

EVIDENCE — SEDUCTION — REPUTATION OF PROSECUTRIX. — *Held*, that on the issue of the previous chaste character of the prosecutrix in a seduction case, the head of a family of which the prosecutrix was a member for three months may express an opinion based on his acquaintance and an observation of prosecutrix's general conduct. *People* v. *Wade*, 50 Pac. Rep. 841 (Cal.).

Evidence of general reputation is admissible for the accused in criminal cases, *Reg.* v. *Rowton*, L. & C. 520; and where the character of the complainant is a part of the issue, as in a proceeding for slander, or seduction, evidence of general reputation is admissible even in civil cases. *Scott* v. *Sampson*, 8 Q. B. D. 491. The difficulty with the evidence received in the principal case is, that it is not evidence of the general reputation of the prosecutrix for chastity, but the personal opinion of a single witness. Such evidence cannot properly be admitted. *Conkey* v. *People*, 1 Abb. Ct. of App. Dec. 418.

JURISDICTION — SUIT TO VACATE JUDGMENT — NON-RESIDENT. — Defendant, a non-resident, had obtained a divorce by fraud, which the plaintiff sued to have vacated. The defendant had left the State, and notice was served on him by publication. *Held*, the court had jurisdiction. *Everett* v. *Everett*, 47 N. Y. Supp. 994.

The defendant, having once put himself within the jurisdiction of the court by bringing suit, is within its control as long as the suit continues. *Elsasser* v. *Haines*, 52 N. J. L. 10. A petition to set aside a judgment is a part of the same suit, for it need not be begun by original writ. *Edson* v. *Edson*, 108 Mass. 590. The court therefore has jurisdiction over the parties, although the petition may, because of the practice of the State, take a form apparently distinct from that of the original proceedings. *Fitzsimmons* v. *Johnson*, 90 Tenn. 416, 436.

PROPERTY — ADEMPTION OF PORTIONS — PERSON IN LOCO PARENTIS. — *Held*, that a father is the only person who is *prima facie in loco parentis* as regards the equitable rule, known as the rule against double portions, viz. that an advancement by a testator during his life to one toward whom he is *in loco parentis* is presumed to be in satisfaction of a provision in a previously executed will in favor of the same person. The rule, therefore, does not apply to provisions made for a child by the mother, without positive proof that she assumed the position of a father with its attendant moral duties. *In re Ashton*, [1897] 2 Ch. 574.

The term *in loco parentis* is ambiguous, and seems to have different meanings in different connections. See *Sayre* v. *Hughes*, 5 Eq. 376, 380. The principal case

however, seems to be in accordance with the general understanding as expressed in numerous *dicta*. The case seems right also in that it restricts the application of the rule against double portions, which, though well established, has been severely and justly criticised. 2 Story, Eq. Jur., 13th ed., §§ 1109–1118.

PROPERTY — ADVERSE POSSESSION — MINING LANDS. — The defendant occupied adversely for the statutory period six acres of a large tract of land owned and worked by a mining company. The land directly underneath the six acres had not been worked by the company. *Held*, the defendant acquired title only to the surface of the land occupied and not to the mineral estate beneath. *D. & H. Canal Co.* v. *Hughes*, 38 Atl. Rep. 568 (Pa.).

The case presents an important question for mine owners, and one of such novelty that the court was unable to find any authorities, either cases or text-books. The extent of the defendant's occupation must determine the amount of property to which he acquired title, and this must be considered with reference to the circumstances. The occupant of the surface of ordinary land acquires title to the soil below. This title must rest on the presumption that occupation of the surface is possession to the centre of the earth; it cannot rest on actual possession, for there has been none. But it would be absurd to require the occupant to take possession by digging. To rebut the presumption in the case at bar there were several facts: the defendant had never claimed anything but the surface; he had never mined, although he knew of the mineral estate; the plaintiff company was mining near at hand and had easy access to the property without disturbing the defendant's occupation of the surface; the surface was of trifling value compared with the mineral estate. The conclusion, therefore, that the defendant, in order to have acquired title to the mineral estate, should have taken actual possession by mining, seems to be justified.

PROPERTY — FRAUDULENT CONVEYANCES — STATUTE OF FRAUDS. — Defendant entered into an oral contract with A in consideration of marriage, that he would convey to her a home in her own right. After marriage he conveyed to her a house and land in performance of the contract. Plaintiff was a creditor under a judgment rendered after the conveyance. *Held*, that the original contract was void by the Statute of Frauds and would not support the conveyance, which was therefore voluntary and fraudulent. *Keady* v. *White*, 48 N. E. Rep. 314 (Ill.).

Apparently in Illinois, a contract in consideration of marriage is void unless the memorandum be contemporaneous. *McAnnulty* v. *McAnnulty*, 120 Ill. 26. The general rule, however, is that the memorandum may be made at any time before action brought, even after marriage. *Barkworth* v. *Young*, 4 Drew. 1. On the latter view the transaction in the principal case should be upheld. In the analogous case of an oral trust, the trustee may convey to his *cestui* even after bankruptcy. *Gardner* v. *Rowe*, 2 Sim. & St. 346. A written ante-nuptial agreement as to specific property may be carried out, and this should be allowed even where the agreement is oral, as in the case of the trust. This view is supported by a few cases, e. g., *Hussey* v. *Castle*, 41 Cal. 239. In the principal case there is no agreement as to specific property, but the wife is at least a creditor, and a conveyance to her, therefore, would not be within the statutes against fraudulent conveyances, whatever might be the effect of the statutes against preferring creditors. But the authorities generally hold that carrying out an oral ante-nuptial agreement, even as to specific property, is a fraudulent conveyance. *Warden* v. *Jones*, 2 De G. & J. 76.

PROPERTY — REGISTRY OF DEEDS — NOTICE. — A sold land to B, and later to C, who recorded his deed first. After B's deed was on record, C mortgaged the land for value to D, who was ignorant of B's claim. D then recorded. *Held*, that D's title would prevail over B's, if C bought without notice of the previous deed to B, otherwise not. *Parrish* v. *Mahany*, 73 N. W. Rep. 97 (S. D.).

The South Dakota statute makes every deed of land void against a later *bona fide* purchaser for value whose deed is first recorded. Taking this literally, C would be protected and could pass good title, if he bought in good faith; but if not, he would not be protected, nor would D, since the latter's deed was not first recorded. The decision might have been put on this narrow, perhaps too narrow, construction of the statute. The court, however, goes on the ground that D, having constructive notice of the earlier deed to B, must at his peril ascertain if C bought *bona fide*. This is begging the question, as it is much disputed whether a grantee has notice of any deeds by a grantor under whom he claims, if recorded after the deed by that grantor which is in the grantee's chain of title. *Conn* v. *Bradish*, 14 Mass. 296; *Morse* v. *Curtis*, 140 Mass. 112; *Fallass* v. *Pierce*, 30 Wis. 443; *Woods* v. *Garnett*, 72 Miss. 78. Another branch of the same general question was touched on in the discussion of *Bennett* v. *Davis*, 38 Atl. Rep. 372, in 11 HARVARD LAW REVIEW, 344.

PROPERTY — RULE IN SHELLEY'S CASE. — *Held*, that the rule in *Shelley's Case* is a positive rule of law and not a rule of construction. *Van Grutten* v. *Foxwell*, [1897] A. C. 658.

This decision of the House of Lords, and especially the clear and careful opinion of Lord Macnaghten, should do away with all the misunderstanding which has so long enveloped the rule in *Shelley's Case*. Lord Macnaghten gives a detailed history of the rule and of the controversies to which it gave rise. He effectually disposes of the idea that the rule is one of construction to give effect to the "general intent" over the "particular intent," an idea which prevailed in the mind of at least one great lawyer as late as 1884; see opinion of Earl Cairns in *Bowen* v. *Lewis*, 9 App. Cas. 890, 907.

PROPERTY — TENANT AT WILL — NOTICE TO QUIT. — The plaintiff was A's tenant at will. A conveyed the premises to B, and B received rent from the plaintiff. B afterward leased part of the premises to C, and the plaintiff was forcibly ejected by the defendant, C's servant, without notice to quit. *Held*, the plaintiff's tenancy was terminated by the lease, and he could not maintain trespass *quare clausum*. *Seavey* v. *Cloudman*, 38 Atl. Rep. 540 (Me.).

Upon payment of rent to B, the plaintiff became B's tenant at will. *Anderson* v. *Prindle*, 23 Wend. 616. So the question for the court was whether a landlord could terminate a tenancy at will by a lease of part of the premises, without giving the statutory notice to quit. The result reached, that the statute did not apply to the present case, and that the tenancy was terminated by the lease without notice, seems to be in harmony with previous decisions in Maine and Massachusetts. It has been held that a tenancy at will is terminated without notice to quit when the landlord conveys the premises: *McFarland* v. *Chase*, 7 Gray, 462; *Robinson* v. *Deering*, 56 Me. 357; even if the conveyance is merely colorable: *Curtis* v. *Galvin*, 1 Allen, 215; so, too, when the landlord leases the whole premises: *Pratt* v. *Farrar*, 10 Allen, 519. The principal case provides one more way of escaping the requirements of the statute. As a result, there seems to be but little vitality left in the statute, and the estate of a tenant at will is as precarious as it was at common law.

PROPERTY — VENDOR'S LIEN. — *Held*, that where land is conveyed by absolute deed, no vendor's lien exists for unpaid purchase-money, in the absence of express agreement by the parties. *Smith* v. *Allen*, 50 Pac. Rep. 783 (Wash.).

The law is settled the other way in England, *Mackreth* v. *Symmons*, 15 Ves. 329, and in fully half of our States, including New York, New Jersey, Ohio, Illinois, and Michigan. The English doctrine has been severely condemned in Massachusetts, *Ahrend* v. *Odiorne*, 118 Mass. 261, and in many other States. In still others it has been abolished by statute. The doctrine apparently developed in England after the settlement of this country, and there is now a strong tendency here to break away from it. The English cases go on the ground that it is unjust to allow a vendee to keep land for which he has not paid. When the vendor can without difficulty secure himself by taking a mortgage, this argument seems of little weight, especially in this country, where land is easily levied on to enforce judgments, and where public policy is strong against secret liens. The English view gives an unpaid vendor an unfair advantage over other creditors of the vendee. Jones on Liens, 2d ed., ch. 1.

SALES — DELIVERY — SECOND VENDEE. — Apples were sold to the plaintiff but left in the possession of the vendor, who afterwards sold and delivered them to the defendant, an innocent purchaser. *Held*, the defendant was not guilty of conversion. *Cummings* v. *Gilman*, 38 Atl. Rep. 538 (Me.).

After the first sale the vendor is bailee and the vendee bailor of the chattel. Whatever may be the right of the bailor's assignee (10 HARVARD LAW REVIEW, 57), it is well settled that the bailor may maintain trover against the purchaser from the bailee. 2 Notes to Saunders, 91, note h. The defence to such an action must rest on the ground that the vendee has been guilty of fraud in allowing the chattel to remain in the hands of the vendor, and is therefore estopped from denying that the latter is his agent for sale. *Jewett* v. *Lincoln*, 14 Me. 116. The vendee should have a reasonable time to take possession. *Ingraham* v. *Wheeler*, 6 Conn. 277, 284; *Kleinschmidt* v. *McAndrews*, 117 U. S. 282. *Lanfear* v. *Sumner*, 17 Mass. 110, seems to be the only case where a recovery has been refused unless fraud was shown, but this case has been severely and apparently justly criticised. *Ricker* v. *Cross*, 5 N. H. 570; *Meade* v. *Smith*, 16 Conn. 346, 365; *Taylor* v. *Boardman*, 25 Vt. 581.

TORTS — INJURY TO EMPLOYEE — DEFECTIVE APPLIANCES. — A railroad track was so laid over a bridge that the ends of bolts in a truss at the side of the bridge were only fifteen inches from a car passing through. Plaintiff, a brakeman in defendants' employ, while descending the ladder in the course of his duties, was struck by the

bolts and badly injured. *Held*, that he could recover. *Bryce* v. *Chicago, &c. Ry. Co.*, 72 Pac. Rep. 780 (Iowa).

The general rule is applied, that if defendants ought to have foreseen injury to employees from the bolts, they would be liable, unless it was shown that plaintiff entered, or continued in, their employ with notice of the danger, or was guilty of contributory negligence. The decision is interesting as throwing a side light on what are known as low-bridge cases, in which it has been held that railroad companies are not liable for injuries due to low structures over their tracks. It is submitted that these cases are not really in conflict with the principal case, as they may be put on the ground of assumption of a plain risk, or of contributory negligence. The only difference is that there is greater probability of notice to the employee in the case of overhead structures than in the case of those at the side of the track. See *C. & A. R. R. Co.* v. *Johnson*, 116 Ill. 206; *B. & O. & C. R. R. Co.* v. *Rowan*, 104 Ind. 88; Beach, Cont. Neg., 2d ed., § 363.

TORTS — RAILROADS — LIABILITY FOR FAILURE TO FENCE. — The defendant company was required by statute to fence its tracks. The railroad passed through A's land, and the defendant allowed him to make an opening in the fence, on condition that he would keep suitable gates at the crossing. A failed to perform the condition, and his default was known to the defendant. The plaintiff's animals trespassed on A's land and strayed thence to the railroad, where they were killed by a passing train. *Held*, the defendant was liable for not maintaining a fence, as required by statute. *Neversorry* v. *Duluth etc. Ry. Co.*, 73 N. W. Rep. 125 (Mich.).

Although the plaintiff's animals were trespassing by going on the track, that did not excuse the defendant for neglect of its statutory duty. *Curry* v. *Chicago, etc. Ry. Co.*, 43 Wis. 665. In many States, if the animals escape on account of the plaintiff's negligence, the defendant is not liable. *Curry* v. *Chicago, etc. Ry. Co., supra.* In other jurisdictions the contributory negligence of the plaintiff is no defence.. *Flint, etc. Ry. Co.* v. *Lull*, 28 Mich. 510; Beach, Con. Neg., 2d ed., § 230. These fencing statutes are enacted for the purpose of protecting the property of adjoining owners. *Flint, etc. Ry. Co.* v. *Lull, supra.* It would seem, therefore, that the plaintiff should not recover when his animals are not rightfully on the adjoining land. And this is the view taken by some courts. *Manchester, etc. Ry. Co.* v. *Wallis*, 14 C. B. 213; *Eames* v. *Salem, etc. Ry. Co.*, 98 Mass. 560. But the doctrine of the principal case prevails in many western States, where the custom of allowing stock to run at large is general. Beach, Con. Neg., 2d ed., § 227.

TORTS — STRUCTURES ON LAND — INDEPENDENT CONTRACTOR — The defendant, through its contractor, erected a grand-stand at its race-track. It then leased the structure, and plaintiff, who had paid an admission fee to the lessee, was injured through a defect caused by the negligence of the original contractor. *Held*, that the defendant is liable for the negligence of its contractor. *Fox* v. *Buffalo Park*, 47 N. Y. Supp. 788.

The case makes the defendant an insurer against his contractor's negligence. It follows *Francis* v. *Cockrell*, L. R. 5 Q. B. 184; s. c. ibid. 501, and is generally law. The latter case was based on the analogy of the liability of common carriers, and the rule in England is limited to structures of a public nature where an admission fee is charged. *Searle* v. *Laverick*, L. R. 5 Q B. 122. Some of the States follow the same doctrine, and such is the tendency of the principal case. *Walden* v. *Finch*, 70 Pa. St. 460. This position is open to criticism, as the law relating to common carriers is rather an anomaly founded on public policy. Other courts base these cases on *Fletcher* v. *Rylands*, L. R. 1 Ex. 265, and extend the rule to all structures erected on land. *Gorham* v. *Gross*, 125 Mass. 233. It would seem that this is the true theory, and that the doctrine should stand or fall with the reasoning in *Fletcher* v. *Rylands, supra.* Negligence on the part of the owner or contractor is generally required, however, and the landowner is not made an absolute insurer except in certain dangerous undertakings. *Kendall* v. *Boston*, 118 Mass. 234.

TRUSTS — BEQUEST ON A SECRET UNDERSTANDING. — A testatrix made an absolute bequest of certain property to her executors in case certain charitable trusts, declared in previous sections of the will, should be held invalid. One of the executors drew up the will. *Held*, that his knowledge of the contents of the will implied a secret understanding that he would take the bequest on the trusts declared, and as they were illegal, the next of kin were entitled to his share. *Edson* v. *Bartow*, 48 N. E. Rep. 541 (N. Y.).

The Court of Appeals hereby affirms the decision of the Supreme Court both in this case and in *Fairchild* v. *Edson*, 28 N. Y. Supp. 401, in which the charitable trusts were declared void for indefiniteness. Fortunately a statute, N. Y. Laws, 1893, c. 701, passed after the date of this will, has rendered impossible another decision like the latter.

The doctrine of the principal case will therefore never operate again to defeat a testator's wishes in cases of charitable trusts. The decision now upheld is criticised in 10 HARVARD LAW REVIEW, 445.

TRUSTS — LIABILITY OF TRUSTEE — PLEADING. — Where an action was brought against trustees as such for an injury arising from their negligence in caring for the trust premises, *held*, they were not liable as trustees, and an amendment to charge them personally was not permissible, as it would be a new cause of action. *Keating v. Stevenson*, 47 N. Y. Supp. 847.

The decision is correct in holding that at common law the trustees were liable only in their individual capacity as legal owners of property. The common law does not recognize a trustee as trustee. The court dismissed the action on the ground that judgment against defendants as trustees must necessarily be satisfied out of the trust estate and a trustee cannot be allowed to charge the *res* with a personal liability due to his own mismanagement of the trust. But there is no statute in New York making a judgment against a trustee a charge upon the estate, such as has been passed there and in other States in case of executors and administrators. Mass. Pub. Stats. c. 166, § 8; Bliss' N. Y. Code, § 1814. Therefore the judgment at law against the trustees, though named as such, is against them as individuals merely. It is not a charge upon the trust estate, for this the common law does not, unless compelled by statute, recognize. The description as trustees is mere surplusage, an amendment is unnecessary. *Shepard* v. *Creamer*, 160 Mass. 496; *Odd Fellows Assoc.* v. *McAllister*, 153 Mass. 296. Under the above-mentioned statutes applying to executors and administrators the words of description would of course not be surplusage. *Yarrington* v. *Robinson*, 141 Mass. 450.

REVIEWS.

BOUVIER'S LAW DICTIONARY. By John Bouvier. New edition, by Francis Rawle. Volume I. Boston: Boston Book Co. pp. xviii, 1125.

Though only the first half of Mr. Rawle's latest revision of Bouvier's Dictionary has been published, the quality of the work can be well judged from what is now at hand. When a work is so well known to the profession, as is this law dictionary in the many editions through which it has passed, it is difficult to say anything new about it, more especially when a former edition has been prepared by the same editor. The latest previous issue of this work, however, came out in 1883, so that evidently the present one ought to be to a very large extent a new book; and so it is, as to a fourth of the whole, while still keeping within the limits of two volumes of a reasonable dictionary size. The additions appear to be largely in the direction of a legal encyclopædia, particularly as to the less technical parts of the law. There is an immense amount of reading in it that will be of interest to the layman as well as the lawyer, such as the articles on Elections, Eminent Domain, and several topics in Constitutional Law. To the lawyer, the completeness of the work as a dictionary, the accuracy of the definitions, and the character of the references, must be the most important points. A hurried examination of this first volume seems to show that it does not in these respects fall below the standard of excellence which might be expected of Mr. Rawle. No work of this sort will ever be perfectly complete. A test of the completeness of a law dictionary, it has been suggested, is whether it explains the nature of a Common *Condidit*. This latest work does not do this; but it is, comparatively speaking, the most comprehensive yet published. It is the product of great industry and wide legal learning; and as such it is likely, owing to the continual demand for works of this character, to receive a very hearty appreciation. R. G.